

12/96)

ATTACHMENT #2

CIVIL COVER SHEET

S-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

PLAINTIFFS

Richard W. Comerford

DEFENDANTS

Michael J. Frambry

COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

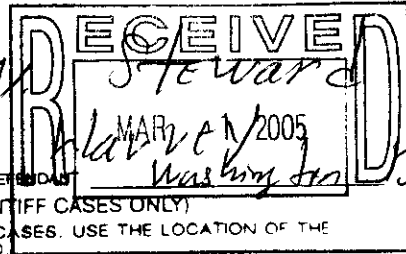
(EXCEPT IN U.S. PLAINTIFF CASES)

Plymouth

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED



ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

Pro Se

05-10439 WGY

BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 2 Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State ☒ PTF ☐ DEF
 Citizen of Another State ☐ PTF ☒ DEF
 Citizen or Subject of a Foreign Country ☐ PTF ☐ DEF

ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> Medicare Act <input type="checkbox"/> Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> Stockholders' Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 760 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1365(f)) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DMC/DMM (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7809	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 881 Agricultural Acts <input type="checkbox"/> 882 Economic Stabilization Act <input type="checkbox"/> 883 Environmental Matters <input type="checkbox"/> 884 Energy Allocation Act <input type="checkbox"/> 885 Freedom of Information Act <input type="checkbox"/> 886 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 887 Constitutionality of State Statutes <input checked="" type="checkbox"/> 888 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 10 Land Condemnation <input type="checkbox"/> 20 Foreclosure <input type="checkbox"/> 30 Rent Lease & Ejectment <input type="checkbox"/> 40 Torts to Land <input type="checkbox"/> 45 Tort Product Liability <input type="checkbox"/> 50 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 448 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 535 General <input type="checkbox"/> 536 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

I am suing under the Freedom of Information & Privacy Act & retaliation against military whistleblower (10 USC 1034)

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO

I. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

II. RELATED CASE(S) (See Instructions): IF ANY

JUDGE

Young

DOCKET NUMBER

99-11712

SIGNATURE OF ATTORNEY OF RECORD

IN OFFICE USE ONLY

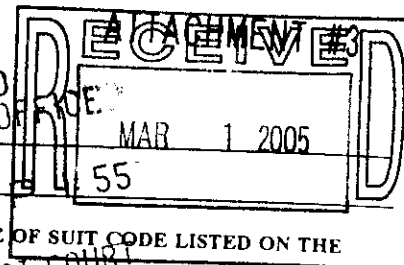
EXEMPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) _____

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT
- ☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.

*Also complete AO 120 or AO 121
for patent, trademark or copyright cases

- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 363, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

05-10439-WGY

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES ☐ NO ☒

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC 2403)

YES ☐ NO ☒

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES ☐ NO ☐

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284?

YES ☐ NO ☒7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)).YES ☐ NO ☒

OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? - (SEE LOCAL RULE 40.1(D)).

YES ☐ NO ☐8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT?YES ☐ NO ☒

(a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE?

9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? East10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION; YES ☐ NO ☒OR WESTERN SECTION; YES ☐ NO ☒

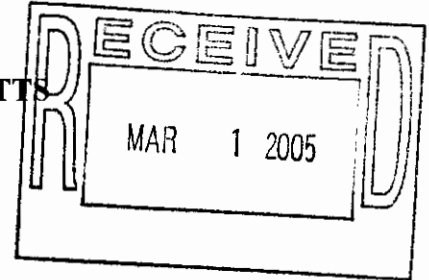
(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Richard W. ComerfordADDRESS 9 Speedwell LaneTELEPHONE NO. 508-833-9396

(Cateform rev. 3/97)

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**



Richard W. Comerford
Plaintiff,

Vs.

Michael W. Steward et al
Defendant,

Civil Action No.

05-10438 WGY

Referred to NJ JL Alexander

COMPLAINT

I. INTRODUCTION

I have made numerous requests pursuant to the freedom of information and privacy acts to the Secretary of the Army ("Secretary") for a complete and un-redacted copy of my purported criminal file and to amend said file which he has ignored. Pursuant to a 1999 arbitration agreement in civil action numbered 99-11712-WGY and also a purported 2001 settlement agreement in civil action numbered 00-11671, signed by AUSA Barbara Healy Smith and my purported attorney Eric S. Maxwell, this matter was referred to the Army Board for the Correction of military Records ("ABCMR"). The ABCMR accepted an application from me in 1999 but refused to address this matter in its 2001 recommendation to the Secretary. In 2002 Attorney Eric S. Maxwell, who had not made an appearance in the above cited action and who I had not retained to represent me in action number 00-11671, filed an application as part of the above cited settlement agreement, with the ABCMR for reconsideration of its 2001 recommendation to the Secretary. The ABCMR did not accept Mr. Maxwell's application. The statutory time

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limit of 10-months for the ABCMR to respond to my application had elapsed without any response from the ABCMR. I then filed an application with the ABCMR pro se. The ABCMR also ignored my application. However from about April 2002 to January 2005 the ABCMR lied to the Court and to my Members of Congress about this matter. It fraudulently claimed that it was considering my application. Finally after I filed numerous freedoms of information and privacy acts the government finally admitted to my Member of Congress that the ABCMR was not considering my application and that it did not have a case open on me.

II. JURISDICTION

This court possesses subject matter jurisdiction to entertain this action pursuant to the Freedom of Information and Privacy Acts (5 USC 552/5 USC 552a) of the United States Code and the military whistleblower act (10 USC 1034).

III. PARTIES

1. Plaintiff is a United States citizen who resides at 9 Speedwell Lane, Plymouth, Massachusetts.
2. Michael W. Steward was, at the time he investigated me for the purported theft of over \$105,000.00 in so-called incapacitation pay and for purportedly making false claims and false statements, the Special Agent in Charge 3rd Military Police Group

(CID) located at 27 Quebec Street, Devens, Massachusetts 01432-4424. He is sued in his personal and official capacities.

3. Francis J. Harvey is the current Secretary of the Army with his office located at the Pentagon in Washington D.C. 20310. He is sued in his official capacity.

IV. VENUE

Venue is properly in this court by virtue of plaintiff's residence in the District of Massachusetts.

V. FACTS

Military Service Background

1. I entered the armed forces of the United States in 1971.
2. I served thereafter on active, inactive and Active Guard and Reserve ("AGR") duty as an infantry and Special Forces soldier in the Army, Army Reserve and Army National Guard.
3. In 1992 I qualified for an active duty retirement pursuant to 10 USC 3911.
4. In 1993 I was serving on AGR duty and stationed at Camp Edwards, Massachusetts.

5. AGR duty is performed in the National Guard pursuant to AR 135-18 and 32 USC 502 (f).
6. Pursuant to AR 135-18 and 32 USC 502 (f) AGR duty is described as follows.
7. AGR duty is performed in support of the National Guard and Reserve.
8. AGR soldiers provide organizational, administrative, recruiting, instruction and training support to the National Guard and Reserve.
9. Officers on AGR duty initially serve for a 3-year period.
10. Officers on AGR duty serve for indefinite periods thereafter.
11. Soldiers serve on AGR duty until they have attained 20 years and one month of qualifying service for retirement purpose under 10 USC 3911 unless they have been approved for voluntary retention.
12. Soldiers on AGR duty are discharged from AGR duty by the physical delivery of their discharge certificate (DD Form 214) at the separation point on the effective date of discharge from AGR duty.
13. In 1993 I was assigned as Commandant of a RECONDO (Reconnaissance – Commando) School on AGR duty.
14. In August 1993 I was injured in the line of duty (“ILD”) conducting the cliff evacuation of a seriously ill soldier at Poet’s Seat in Greenfield, Massachusetts while on AGR duty.
15. After I was injured the Army and Guard denied that I had been injured ILD while on AGR duty.

16. The Army Inspector General ("IG") found that the Army and Guard improperly stopped my entitled active duty medical care and pay without due process I had been injured ILD while on AGR duty.
17. I was not discharged from AGR duty after I was injured ILD in August 1993 while serving on AGR duty.
18. I have never discharged from AGR duty.
19. The Army and Guard stopped my entitled active duty medical care and pay after I was injured in the line of duty ("ILD") because they had been lying to Congress.
20. Essentially the Army and Guard had been cooking the books. They had placed more soldiers, including myself, on AGR duty then were authorized by Congress
21. The Army and Guard then unlawfully had paid I and other soldiers with funds that had not been appropriated by Congress for AGR duty.
22. The Army and Guard have never reported my AGR service to Congress.
23. The Army and Guard have never credited me for my AGR Service on my service record.
24. The Army and Guard have never discharged me from AGR duty.
25. The Army and Guard have never provided proper medical care for my ILD injury.
26. The Army Inspector General ("IG") found that the Army and Guard have never medically returned me to duty after the 1993 ILD injury.
27. The Army and Guard started my pay again and then improperly stopped my active duty as of April 1996.
28. The Army and Guard and have refused to either pay me or discharge me from AGR duty retire me from active duty since April 1996.

29. The Army and Guard have also refused to grant me permission to work as a civilian without a discharge certificate (DD Form 214) from AGR duty.
30. Instead the Army and Guard fraudulently accused me of purportedly collecting civilian employment pay without a discharge certificate from AGR duty. *See below.*
31. Pursuant to AR 135-18 and 32 USC 502 (f) soldiers on AGR duty are authorized active duty pay until such time as they are duly discharged from AGR duty as described above.
32. The Army and Guard have never paid me active duty pay appropriated by Congress for my AGR duty.
33. Pursuant to AR 135-18 and 32 USC 502 (f) soldiers on AGR duty are authorized active duty, medical care until such time as they are duly discharged from AGR duty as described above.
34. Pursuant to AR 40-3, 40-501 and 135-381 soldiers who are injured ILD on AGR duty essentially fall under the control and are subject to of the active duty medical regulations.
35. Pursuant to AR 40-3, 40-501 and 135-381 soldiers who are injured ILD on AGR duty are referred to a medical treatment facility for care.
36. Pursuant to AR 40-3, 40-501 and 135-381 soldiers who are injured ILD on AGR duty are also referred to a medical evaluation board which evaluates their case and supervises treatment.
37. Pursuant to AR 40-3, 40-501 and 135-381 the case of a soldier who is injured ILD on AGR duty is disposed of by the MTF Commander.

38. The U.S. Army Inspector General (“IG”), and the Massachusetts National Guard medical duty review board (“MDRB”), State Surgeon and Staff Judge Advocate (“SJA”) all found that I was injured ILD in 1993.
39. In 1996 the IG also found as mentioned above that I had not received proper medical care for my 1993 ILD injury and that I had not been medically returned to duty after the 1993 ILD injury.
40. In 1997 the MDRB found that I was “not medically fit for continued service”.
41. The MDRB referred plaintiff’s case to Army medical and physical evaluation boards (“MEB/PEB”) for a medical retirement.
42. I have never been medically returned to duty after his 1993 ILD injury or after the 1997 MDRB referral.
43. In January 1995 and again in November 1998 MG Vezina and the Massachusetts National Guard falsely accused me of purportedly working for a non-existent private security company (“Phoenix”) and of purportedly collecting civilian employment pay.
44. In March 1995 an investigation by the Massachusetts National Guard SJA could find no evidence that I had collected pay from Phoenix or any other private company.
45. In December the Army asked the U.S. Attorney for Massachusetts to prosecute me for purportedly collecting civilian employment pay.
46. The U.S. Attorney for Massachusetts declined to prosecute me for my purported crime citing lack of evidence.

47. Neither the Army nor the Guard could provide the U.S. Attorney with a single accounting, business or tax document showing that I had purportedly collected employment pay from Phoenix or any other civilian company.
48. In November 2001 the ABCMR finally published a recommendation to the Secretary of the Army ("Secretary) on my case.
49. The ABCMR recommended that I be credited for my AGR service Massachusetts National Guard.
50. It did not recommended that I be discharged from AGR duty.
51. The Secretary approved the ABCMR's recommendation.
52. However I was not credited for my AGR service on my service record.
53. I was not discharged from AGR duty.
54. My AGR service was not reported to Congress.
55. I was not paid active duty pay authorized by Congress for my AGR service.

Civil Action History

56. In November 1994 and again in October 1998 I filed complaints with the IG and also in 1998 with my Member of Congress ("MC") against the Massachusetts National Guard and its Adjutant General – Major General ("MG") Raymond A. Vezina.

57. In January 1995 and again in November 1998 MG Vezina and the Massachusetts National Guard unlawfully retaliated against me for communicating with the IG and My MC.

58. In January 1995 and again in November 1998 MG Vezina and the Massachusetts National Guard falsely accused me of purportedly working for or being a partner in a non-existent private security company ("Phoenix") and of purportedly collecting civilian employment pay from Phoenix.

59. Eventually the Guard and the Army would accuse me of purportedly collecting employment pay from approximately 13-civilian companies.

60. In March 1995 a log of an investigation conducted by the Massachusetts National Guard, of which I received a copy of in response to a FOIA request, found no evidence that I had collected pay from Phoenix or any other private company.

61. In December the Army asked the U.S. Attorney for Massachusetts to prosecute me for purportedly collecting civilian employment pay.

62. The U.S. Attorney for Massachusetts declined to prosecute me for my purported crime citing lack of evidence.

63. Neither the Army nor the Guard could provide the U.S. Attorney with a single accounting, business or tax document showing that I had purportedly collected employment pay or received stock from Phoenix or any other civilian company.

64. In January 1999 I filed an action in Massachusetts State Court numbered 99-0416F and sued MG Vezina and the Massachusetts National Guard. I named as one of the defendants COL Robert E. D'Alto the assistant Adjutant General of the Massachusetts National Guard.

65. The State government as an affirmative defense fraudulently claimed that I had “dirty hands” because I had purportedly collected civilian employment pay while at the same time collecting pay from the federal government.
66. The State government also claimed that the only “venue” to resolve this matter was by my application to the ABCMR.
67. However the ABCMR, a federal body, did not and does not have authority over the Massachusetts National Guard.
68. The State Judge reviewed the case and told the parties in his chambers after reading the IG Report of Inquiry on this matter that I “had been screwed”.
69. The federal government then fraudulently removed the case to federal Court.
70. The federal government purported I had named COL D’Alto as a defendant in his official capacity as a member of the federal armed forces.
71. However COL D’Alto was a member of Massachusetts National Guard and I sued him in his capacity as assistant Adjutant General.
72. The federal government had lied to the State and federal Courts.
73. In federal arbitration the State and federal governments stated that they had declined to prosecute me for my above mentioned purported crime.
74. In federal arbitration the State and federal governments again also fraudulently claimed that the ABCMR was the only venue that could resolve my case.
75. In 1999 an application was duly filed on my behalf with the ABCMR by my then attorney Eric Maxwell.
76. The ABCMR did not open a case upon receipt of my application.

77. Mr. Maxwell decided not to prosecute the case walked away from it and ceased communicating with me.
78. In 2000 I filed another case pro se numbered 00-11671-WGY. The case was in part on this matter.
79. In November 2001 the ABCMR finally published a recommendation to the Secretary of the Army ("Secretary") on my case.
80. The ABCMR recommended that I be credited for my AGR service Massachusetts National Guard.
81. It did not recommend that I be discharged from AGR duty.
82. The Secretary approved the ABCMR's recommendation.
83. However I was not credited for my AGR service on my service record.
84. I was not discharged from AGR duty.
85. My AGR service was not reported to Congress.
86. I was not paid the active duty pay authorized by Congress for my AGR service.
87. I moved Judge William Young to reopen the case.
88. Prior to I moving Judge Young to reopen the case the government had successfully moved Judge Young to consolidate the two cases I had filed pro se with the case it had fraudulently removed from State to federal Court and from which Attorney Maxwell had walked away from in 1999.
89. The government then claimed that Attorney Maxwell represented me in the consolidated action.
90. I then moved Judge Young in court to be allowed to represent myself in the consolidated action.

91. Over the objections of AUSA Smith and as evidenced by the transcript Judge Young ruled that I could represent myself in the consolidated action.
92. Mr. Maxwell then made, as evidenced by the transcript, an appearance as a “friend of the court” in the consolidated action.
93. He did not make an appearance as my attorney.
94. He did not make, and never has made, an appearance as my attorney in the consolidated action.
95. I did not, and have not retained, Mr. Maxwell to represent me in the consolidated action or any other matter.

My Purported Criminal History

96. The Army and Guard also fraudulently accused me of purportedly collecting so - called incapacitation pay from 1994 to 1996
97. The Army and Guard claimed I was not “authorized” to collect so -called incapacitation pay.
98. Pursuant to AR 135-18 and 32 USC 502 (f) the so called incapacitation pay is not authorized for soldiers on AGR duty.
99. Pursuant to AR 135-18 and 32 USC 502 (f) soldiers on AGR duty are authorized active duty pay until such time as they are duly discharged from AGR duty as described above.

100. In November 1994 and again in October 1998 I filed complaints with the IG and in 1998 with my Member of Congress ("MC") against the Massachusetts National Guard and its Adjutant General – MG Raymond A. Vezina.
101. In January 1995 and again in November 1998 MG Vezina and the Massachusetts National Guard unlawfully retaliated against me for communicating with the IG and My MC.
102. They falsely accused me of purportedly working for a non-existent private security company ("Phoenix") and of purportedly collecting civilian employment pay.
103. As mentioned above in January 1995 and again in November 1998 MG Vezina and the Massachusetts National Guard falsely accused me of purportedly working for a non-existent private security company ("Phoenix") and of purportedly collecting civilian employment pay.
104. As mentioned above in March 1995 an investigation by the Massachusetts National Guard could find no evidence that I had collected pay from Phoenix or any other private company.
105. In December the Army asked the U.S. Attorney for Massachusetts to prosecute me for purportedly collecting civilian employment pay.
106. The U.S. Attorney for Massachusetts declined to prosecute me for my purported crime citing lack of evidence.
107. Neither the Army nor the Guard could provide the U.S. Attorney with a single accounting, business or tax document showing that I had purportedly collected employment pay from Phoenix or any other civilian company.

Steward's Purported Investigation

Suppression of Evidence

108. Steward maliciously failed to mention in his report that I had filed a compliant against the Guard with the IG in December 1994.
109. Steward maliciously failed to mention in his report that the IG, as mentioned above, substantiated all of my accusations and found that I had been injured ILD in August 1993 while on active duty in the Guard and that my Guard superiors had in violation failed to provide me with enticed active duty medical lucre and away after I had been injured ILD.

The Guard Report

110. Steward maliciously failed to mention in his report that the Guard had investigated me for purportedly collecting civilian employment pay from Smith and others and lying about it starting in late 1994 or early 1995 immediately after I had filed the report.
111. Steward maliciously failed to mention in his report that the Guard had investigated me for said purported crimes in early 1995.
112. The Guard had drafted a report and kept a log (DA Form 1594) of its investigation dated 22 and 23 March 1995 respectively.
113. I received a copy of the Guard's March 1995 report (Guard Report) from the Guard in response to a FOIA Request.

114. The Guard Report found that I had had been conducting rappelling training for the 2nd Battalion of the 104th Infantry Regiment in August 1993 in Greenfield, Massachusetts.
115. The Guard Report found that during said training I had had brought an ill soldier down a cliff and had symptoms of a heart attack
116. The Guard Report found: "Over next 11 mos medical orders to Hospitalize him. He was never sent".
117. The Guard Report found that I served ass Commandant of the Recondo School where in addition to military personnel I also trained police.
118. The Guard Report found that in July 1994 I was declared unfit for duty by a Guard physician.
119. The Guard Report found that after I was declared unfit for duty that I was approached by Police SWAT Teams and asked to train them in the capacity of a private citizen.
120. The Guard Report found I continued to train SWAT Teams after I left the Recondo School in July 1994.
121. The Guard Report found that I did not receive either pay from the Guard or form the SWAT Teams to train them after July 1994.
122. The Guard Report found that sometime in early 1995 that I had been invited to the New Bedford Police Department ("NBPD") range by the NBPD range master SGT Ken Gifford to meet two purported former members of the British Special Air Service ("SAS") Regiment from a private company called Phoenix USA which was teaching the NBPD SWAT and Snipers.

123. The two purported former SAS members were identified as David M. Smith and Bruce Turner.
124. A full time Guard officer, Lt. Thomas Leonard ordered a NDPD Norman Duchesneau officer who was also a Guard member to report on my visit to the NBPD range.
125. NBPD SGT Gifford stated that the NBPD did not pay me and that that I was not on the NBPD range on an official basis.
126. Steward a trained investigator knew or should have known that he should have mentioned, cited and included the Guard Report in his CID Report.
127. Steward a trained investigator knew or should have known that the 1996 Guard Report cast doubt on the veracity of the Guard's accusation's against me.

The U.S. Army Inspector General ("IG") Report

128. As mentioned above I made a written complaint to, and requested assistance from, the IG in December 1996.
129. The IG in a report dated 7 February 1996 substantiated each of my allegations against the Guard and made the following findings:
130. - That I had been injured in the ILD in August 1993 while on active duty in the Guard.
131. - That my Guard superiors had, in violation of Army and Guard regulations, improperly withheld entitled active medical care and pay from me after I had been injured ILD.

132. – That my Guard superiors had, in violation of Army and Guard regulations, improperly amended my active duty orders and stopped my active duty service without due process.
133. – That my Guard superiors had, in violation of Army and Guard regulations, had improperly conducted the line of duty investigation into my ILD injury and had falsely reported that I had been medically returned to duty after the 1993 ILD injury and that I had received proper medical care after the 1993 ILD injury and had failed to report that I had been injured ILD while on active duty in the Guard.
134. - That I was initially “improperly denied incapacitation pay” and subsequently “was approved for and received incapacitation Pay”.
135. Attorney Eric S. Maxwell in his law offices on or about 10 December 1998, in the presence of my wife and I, handed a copy of the IG Report to Steward.
136. Steward maliciously failed to mention, cite or include in his February 1998 CID report the IG report.
137. The IG Report contradicts Steward’s findings that I was not authorized to receive so-called incapacitation pay.
138. The IG Report also contradicts Steward’s reporting of his interviews with my former Guard superiors who claimed that I nether required medical care nor was authorized to receive it.
139. The IG Report also contradicts Steward’s claim that I was a purported part, time member of the Guard when I was injured ILD in August 1993.

140. The IG report also criticizes my former Guard superiors for withholding medical care and pay from me after I was injured ILD in 1993 a for conducting an improper line of duty investigation and for filing an erroneous report of said investigation.

141. These same Guard officers initiated the baseless criminal investigations against me in 1994/1955 and 1998 within 2-weeks of I initiating complaints against the IG against them.

142. These same Guard officers were interviewed by Steward for his February 1999 CID Report. In said interviews they launched baseless, defamatory attacks against me.

143. Steward maliciously failed to mention, cite or include in his February 1998 CID report and unlawfully suppressed evidence that would have exonerated me and cast doubt on the good faith of the Guard officers who initiated a baseless investigation of me in retaliation for blowing the whistle on fraud, waste and abuse within the Guard and the Army.

Affidavit of Rhonda Smith ("Rhonda")

144. Attorney Eric S. Maxwell, in his law offices on or about 10 December 1998, in the presence of my wife and I, handed a copy of Rhonda Smith's affidavit to Steward.

145. In her sworn affidavit dated 4 January 1998 Rhonda identified herself as the wife of David M. Smith.

146. Steward in his February 1999 CID Report included documents that identified Rhonda as the president of a private security company named Phoenix USA Inc.
147. In his February 1999 CID Report Steward purportedly established probable cause that I purportedly “failed to report payments” I had purportedly received from Phoenix.
148. However in her sworn affidavit Rhonda stated: “Mr. Comerford was never an employee of mine or my husband’s. Any relationship with Mr. Comerford was terminated by my husband in early 1995.”
149. Rhonda’s sworn January 1998 affidavit contradicts the sworn November 1998 affidavit of her husband concerning my purported employment by Phoenix.
150. Steward maliciously failed to mention, cite or include Rhonda’s Affidavit in his February 1998 CID report and unlawfully suppressed evidence that would have exonerated me and cast doubt on the good faith on the Guard officers who had initiated a baseless investigation of me in retaliation for blowing the whistle on fraud, waste and abuse within the Guard and the Army.
151. Steward also purports that I was a partner in Phoenix and that I purportedly received stock in the company. However as usual Steward failed to produce any evidence, even perjured testimony, that I purportedly received stock in the company

Tampering with and intimidating Witnesses

152. Steward unlawfully tried to intimidate Massachusetts State Police Lieutenant Walter Keenan into falsely swearing that I had collected pay from the State Police for training State Police Troopers.
153. Steward unlawfully tried to intimidate Cambridge Police Department (“CPD”) Sergeant into falsely swearing that I had collected pay from the CPD for training CPD Officers.
154. Steward unlawfully tried to intimidate Cambridge Police Department (“CPD”) Sergeant Robert Ames into falsely swearing that I had collected pay from the CPD for training CPD Officers.
155. Steward unlawfully tried to intimidate other witnesses into falsely swearing that I had collected civilian employment pay.
156. Steward unlawfully encouraged David M. Smith to falsely swear that he had paid me civilian employment pay.

Deliberate Professional Misconduct

157. As mentioned above in his February 1999 CID Report Steward purportedly established probable cause that I purportedly “failed to report payments” I had purportedly received from Phoenix.
158. The only evidence that Steward presented to substantiate this purported fact was the above cited perjured November 1998 affidavit of David M. Smith (“Smith”).

159. Any other reasonable, competent and honest investigator could have easily collaborated, verified and substantiated Mr. Smith's perjured claim that he paid me civilian employment pay.

160. Smith swore that he had a company-- Phoenix, which purportedly trained police departments to include the FBI, New Bedford, West Springfield, Boston, Cambridge and State Police. Smith in his perjured affidavit also swore that I became a partner in Phoenix in November 1994 and that he fired me in April 1995. He further swore that during that approximately 6-month period I trained 6-Police department to include the FBI at Quantico, Virginia.

161. Steward did not include or cite in his report any document to show that Smith's company existed or that it had employees or partners or clients or assets. Steward did not include or cite in his report any employment, business, bookkeeping, tax, FICA, Social Security, withholding, banking, check, or payment voucher, document or transaction showing, indicating or inferring that I had collected civilian employment pay from Smith or any other person of company.

162. Any other reasonable, competent and honest investigator could have easily collaborated; verified and substantiated Mr. Smith's perjured claims. Steward did not because he acted maliciously in an attempt to frame me for a crime he knew I did not commit.

Deliberate Professional Misconduct – II

163. Steward purportedly established probable cause that I “received \$105,000.00 in incapacitation pay which he was not authorized to receive”.
164. Steward as mentioned above maliciously failed to include or cite the IG Report which found that I was entitled to incapacitation pay.
165. Incapacitation pay is authorized pursuant to AR 135-18.
166. Pursuant to the above cited regulation said pay cannot be released to the soldier until: a) he has been determined as incapacitated by his commander, b) a board of officers have recommended on a quarterly basis said pay; c) the National Guard Bureau (“NGB”) approves said pay.
167. The record shows that: 1) I was authorized said pay by the Guard for the period from July 1994 to April 1996; b) I was certified as incapacitated by my commander, a board reviewed my case and recommended said pay on a quarterly basis; c) NGB approved said pay every 6-months.
168. The record contains approximately 100 documents that show that I was certified as incapacitated, recommended, approved and authorized said pay.
169. Any other reasonable, competent and honest investigator would have included or cited the documents on the record.
170. Steward maliciously failed to include or cite said documents in his report.
171. Finally I wrote to Steward’s subordinate, Agents Timothy Reasoner, in a facsimile dated 7 May 1998 – approximately 9-months before Steward purportedly established probable cause, and outlined my case against the Guard and accused it of fraud, waste and abuse. Any other reasonable, competent and

honest investigator would have included or cited my facsimile in his report
Steward maliciously failed to include or cite it.

Deliberate Professional Misconduct – Misuse of Informants

172. Steward procured the services of a professional, paid police informant, David M. Smith (a.k.a. James Smith) in an attempt to frame me for a crime that Steward knew or should have known that I did not commit.
173. As mentioned above Smith's perjured affidavit was the only purported evidence to support Steward's purported establishment of probable cause that I collected civilian employment pay.
174. Smith was a former British subject who had served in the British Army as a physical training instructor.
175. Smith had served as an informant for the British, American and Irish governments in Ireland and Northern Ireland and the U.S. to include posing as the French Foreign Legion veteran "James Smith" and the purported would be assassin of British Prime Minister Tony Blair in the Real IRA-McKevitt terrorist case.
176. He was resettled in the U.S. by the British government.
177. Smith purported that he had served in the British SAS as a weapons expert and as an undercover anti-terrorist commando in 14 Intelligence Company Northern Ireland.

178. Smith also boasted of having served in the French Foreign Legion as a weapons expert.
179. Smith also boasted as having purportedly shot a British Police officer.
180. Smith also boasted as having purportedly shot an IRA gun man.
181. To the best of my knowledge Smith never shot anyone. He served a physical fitness instructor in the British Army. He is a paid, professional liar, informant, perjurer and Special Forces wannabe.
182. He worked initially as a personal fitness trainer in which role he met his wife Rhonda.
183. He subsequently worked for Rhonda's father as a janitor.
184. He also subsequently worked for a private security company named North American Security Company owned by Michael Taylor – a self admitted criminal wiretapper.
185. Taylor's business associate was former FBI Special Agent and now convicted felon John Connolly – an associate of fugitive crime boss James "Whitey" Bulger.
186. Taylor was a former member of the 10th Special Forces Group with which he was stationed for about 3-years at Fort Devens, Massachusetts.
187. Steward was Special Agent in charge of the Fort Devens' CID office.
188. While Taylor was stationed at Fort Devens he was indicted for rape.
189. The Ayer P.D. investigated Taylor for the alleged rape.

190. The Ayer P.D. investigators complained of interference from and attempts of intimidation by from the Fort Devens CID office during their investigation of Taylor.
191. The case against Taylor was dropped when the alleged victim failed to appear.
192. After he was discharged from active duty Taylor was again investigated for alleged rape. Again the case was dropped when the alleged victims failed to appear.
193. After he was discharged from active duty Taylor married into a Lebanese family with alleged ties to drug trafficking from the Beka Valley.
194. After he was discharged from active duty Taylor was escorted into restricted areas of Logan Airport by law enforcement personnel.
195. Smith was also escorted into restricted areas of Logan Airport by law enforcement personnel to include Massachusetts State Police Sergeant James Deyermond.
196. SGT Deyermond assisted the Guard in its 1995 and 1998 baseless investigations and retaliation against me as well as assisting Steward in his 1999 investigation.
197. SGT Deyermond introduced Smith into the 1995, 1998 and 1999 baseless investigations
198. Allegedly during this period members of the Bulger Crime Group were trying to gain access to Logan Airport.

199. Both Taylor and Smith applied for contracts to train the State Police SWAT Team at Logan Airport.
200. Both Taylor and Smith were supported in their efforts by law enforcement personnel with recommendations. Smith received enthusiastic support from SGT Deyermund and other State Police supervisors.
201. Smith in his efforts to secure a contract at Logan fabricated a company named Phoenix Security USA Inc.
202. Smith mailed through the U.S. Mail a fraudulent company profile for the purported Phoenix Security USA Inc. in which he purported to have as partners or employees S. Hammerstrand, N.G. Ely, B. Turner, M. L. Chaney, D. Lema and G.T. Axtell.
203. Both Ely and Hammerstrand advised the State Police that Smith was using their names without their permission
204. The State police ignored Ely's and Hammerstrand's advice and continued to support Smith's efforts to gain access to Logan.
205. Smith also purported to have me as an employee or as a partner in one or more of his companies.
206. Smith in his efforts to secure a contract at Logan also claimed to be a partner and represent a British Security Company called Phoenix Security Management Ltd. Said company was actually run by Mr. Ely who so advised the State Police.
207. Smith in his efforts to secure a contract at Logan further claimed to own another non-existent security company named Phoenix USA Inc.

208. In all Smith claimed to own or be partners in or be in a business association with 10 - security companies in the U.S., Europe and Africa.
209. I had been tasked by the Guard when I was Commandant of the Recondo School to train the SWAT Team at Logan Airport.
210. I continued to train the Logan SWAT Team as an unpaid volunteer after I was injured ILD.
211. The Director of MASSPORT, which supervised Logan, was Peter Blute. He blocked the attempts of Taylor, Connolly, Smith and the Bulger Crime Group to gain access to Logan – despite the best efforts of the State Police.
212. In retaliation Taylor et al, hired a young lady to remove her top on board the annual booze cruise in Boston harbor for the MASSPORT staff, while standing behind Mr. Blute. A photographer retained by Taylor et al was standing by to capture the moment and the resulting photo appeared the next day on the front page of the *Boston Herald*. Mr. Blute subsequently resigned and the State Police renewed its efforts to gain access to Logan for Taylor, Smith et al.
213. State Police supervisors then directed that I not be allowed to train State Troopers.
214. State Police supervisors enthusiastically supported the baseless investigations of Army and Guard into my purported collection of civilian employment pay.
215. Steward a trained investigator knew or should have known that the State Police were trying to frame me.

216. As mentioned above law enforcement personnel to include members of the State Police escorted Smith and Taylor into restricted areas of Logan. Also, as mentioned above, Taylor had married into an Arab family with alleged ties to drug trafficking from the Beka valley in Lebanon.
217. Allegedly drug trafficking from the Beka valley in Lebanon was one of two principal funding sources for AL Qaeda.
218. The other alleged source was diamonds from Sierra Leone and Liberia.
219. Smith claimed to work as a security consultant in Sierra Leone and Liberia prior to 9/11/01.
220. Smith disappeared after 9/11/01.
221. The Director of Security of MASSPORT, a State Police classmate of SGT Deyermund's, stepped down after 9/11/01.
222. After 9/11/01 State Police supervisors stopped making employment and contract recommendations for Taylor and Smith and became tight lipped about their association with Taylor and Smith.
223. The State Police have refused to respond to numerous FOIA request from me for a copy of their file on me.

Unlawful Retaliation Against a Military Whistleblower

224. I filed written complaints with the IG against the Guard in December 1994 and with the IG and my MC in October 1998.

225. In January 1995 the Guard attempted to frame me for theft. The March 1995 Guard Report could find no evidence that I had collected civilian employment pay.
226. In October 1998 the Guard again attempted to frame me for theft.
227. Steward failed to include, mention or cite my 1994 and 1998 IG complaints against the Guard or connect the complaints with the immediate and subsequent purported accusations of theft. In December 1998 the U.S. Attorney for Massachusetts refused to prosecute me for purported theft citing lack of evidence and also advised Steward that I had filed a whistleblower complaint against the Guard.
228. Steward knew or should have known that I had never been discharged from AGR duty and that I was entitled to active duty pay until such time as I was discharged from AGR duty. The whole issue of incapacitation pay was trust an attempt at entrapment on the part of the Guard.
229. Any other reasonable, competent and honest investigator would have mentioned the complaints and the subsequent accusations of purported criminal misconduct and the fact that I had not been discharged and was entitled to pay..

VI. CLAIMS

I hereby claim that the defendant has lied in writing to his superiors about the false accusations made against me by the Guard. Steward fabricated evidence in an attempt to frame me for a crime he knew or should have known that I did not commit. He filed a

Military Abbreviation Index

The U.S Army makes extensive use of abbreviations and acronyms in its regulations, documents and to include the official military record in this case. Following, for the Court's convenience, are the most common ones used by the U.S army in documents connected with this case.

1. AD: Active Duty
2. AGR: Active Guard and Reserve
3. AR: Army Regulation
4. CID: Criminal Investigation Division
5. IDT: Inactive Duty Training
6. IG: Inspector General
7. ILD: In Line of Duty
8. LD: Line of Duty
9. MAANG: Massachusetts Army National Guard
10. MEB: Medical evaluation board
11. MG: Major General
12. MDRB: Medical Duty Review Board
13. MTF: Medical Treatment Facility Commander
14. NGB: National Guard Bureau
15. OER: Officer evaluation report
16. PEB: Physical Evaluation Board
17. RECONDO: Reconnaissance Commando

false police report. He attempted to intimidate two police officers who were witnesses in this matter into committing perjury. Steward suppressed evidence that would have exonerated me of the fraudulent accusations. He acted in this dishonorable fashion in order to unlawfully retaliate against me for lawfully communicating the IG and my Members of Congress and reporting fraud, waste and abuse within the Guard and the Army and to gain favor with his own superiors in order to advance in career. In so doing he destroyed my own career as well as my good name.

VII Prayer for Relief

WHEREFORE, plaintiff respectfully requests that this Honorable Court

(1) Enter a declaratory judgment that Steward knowingly, deliberately and intentionally:

- (a) - Filed a false police report in February 1999 which contained statements that he knew were false or perjured.
- (b) - Suppressed evidence that would have exonerated me.
- (c) – Manufactured avoidance in an attempt to frame me for crimes that he knew that I did not commit.
- (d) - Attempted to intimidate and tamper with witnesses to include encouraging them to perjure themselves.
- (e) – Unlawfully retaliated against me for blowing the whistle on fraud, waste and abuse within the Guard and Army in violation of 10 USC 1034.

(2) Order the Army to properly amend the false February 1999 CID report.

- (3) Order the Army to remove me from a list of individuals who it had been “titled”, i.e.
– identified as having probable committed a crime.
- (4) Order the Army to provide me with a complete, un-redacted copy of its purported criminal investigation of me to include all reports, documents tapes, videos, notes, both formal and both informal, written and electronic
- (5) Order the defendants to provide me with compensation for the loss of my good name, profession, military entitlements, promotion and my ability to earn a living.
- (6) Enter a judgment against the defendant for plaintiff’s costs plus reasonable fees.
- (7) Grant such other and further relief, as it deems just and meet.

Plaintiff respectfully requests trial by jury.

Respectfully submitted this 27th day of February 2005 AD,

Richard W. Comerford Pro See
9 Speedwell Lane
Plymouth, Massachusetts 02360
(508) 833-9396